

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
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Plaintiff,)
)
)
v.) Case No. CR-20-163-PRW
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)
DONALD HYUNGJOON KIM,)
)
)
Defendant.)

ORDER

Before the Court is the United States' Motion to Dismiss Indictment (Dkt. 53), seeking leave of Court to dismiss the Indictment (Dkt. 1) against Defendant Donald Hyungjoon Kim without prejudice. Rule 48(a) of the Federal Rules of Criminal Procedure provides that prior to trial “[t]he government may, with leave of court, dismiss an indictment” in a criminal case. “Requiring the government to obtain leave of the court to dismiss an indictment serves two purposes.”¹ The principal purpose is “to protect a defendant against prosecutorial harassment, e.g., charging, dismissing, and recharging, when the Government moves to dismiss an indictment over the defendant’s objection.”² The secondary purpose is “to allow courts to consider public interest, fair administration of criminal justice and preservation of judicial integrity when evaluating motions to

¹ *United States v. Strayer*, 846 F.2d 1262, 1265 (10th Cir. 1988).

² *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977) (per curiam).

dismiss.”³ “A court is generally required to grant a prosecutor’s Rule 48(a) motion to dismiss unless dismissal is clearly contrary to manifest public interest.”⁴

The Court finds that protection of Mr. Kim from prosecutorial harassment is not an issue, as Mr. Kim has represented to the Court that he does not oppose the motion.⁵ And based on the intervening change in Supreme Court precedent and the Government’s representations, the Court further finds that dismissal without prejudice is not clearly contrary to manifest public interest. Accordingly, the Court **GRANTS** the United States’ Motion (Dkt. 53) and **DISMISSES WITHOUT PREJUDICE** the Indictment (Dkt. 1).⁶

IT IS SO ORDERED this 1st day of August 2022.



PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE

³ *Strayer*, 846 F.2d at 1265.

⁴ *United States v. Carrigan*, 778 F.2d 1454, 1463 (10th Cir. 1985)

⁵ Cf. *United States v. Romero*, 360 F.3d 1248, 1251 (10th Cir. 2004).

⁶ In light of the dismissal of the Indictment, the Court also **DENIES** as moot the Defendant’s Motion in Limine (Dkt. 50).